

# MONTANA LEGISLATIVE HISTORY

Chapter 440 ~~19~~ 2005

Bill H 345 S \_\_\_\_\_

Original bill & history X c

H. Committee on BUSINESS & LABOR

Hearing Date(s) 2/1 X c

EXEC. ACTION 2/2 X c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out \_\_\_\_\_ c

S. Committee on JUDICIARY

Hearing Date(s) 3/9 X c

EXEC. ACTION 3/14 X c

\_\_\_\_\_ c

\_\_\_\_\_ c

Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

## **LEGISLATIVE HISTORIES SINCE 1997**

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

**Bill Draft Number:** LC1378

**Bill Type - Number:** HB 345

**Short Title:** Revise time period for fraudulent transfer statute of limitations

**Primary Sponsor:** Dave Gallik

## **Bill Actions - Current Bill Progress:** Became Law

**Bill Action Count:** 47

| <b>Action - Most Recent First</b>                         | <b>Date</b> | <b>Votes<br/>Yes</b> | <b>Votes<br/>No</b> | <b>Committee</b>       |
|-----------------------------------------------------------|-------------|----------------------|---------------------|------------------------|
| Chapter Number Assigned                                   | 04/28/2005  |                      |                     |                        |
| (H) Signed by Governor                                    | 04/28/2005  |                      |                     |                        |
| (H) Transmitted to Governor                               | 04/18/2005  |                      |                     |                        |
| (S) Signed by President                                   | 04/18/2005  |                      |                     |                        |
| (H) Signed by Speaker                                     | 04/14/2005  |                      |                     |                        |
| (C) Sent to Printing                                      | 04/14/2005  |                      |                     |                        |
| (H) Returned from Enrolling                               | 04/14/2005  |                      |                     |                        |
| (H) Sent to Enrolling                                     | 04/12/2005  |                      |                     |                        |
| (H) 3rd Reading Passed as Amended by Senate               | 04/12/2005  | 68                   | 29                  |                        |
| (H) Scheduled for 3rd Reading                             | 04/12/2005  |                      |                     |                        |
| (H) 2nd Reading Senate Amendments Concurred               | 04/11/2005  | 78                   | 20                  |                        |
| (H) Scheduled for 2nd Reading                             | 04/11/2005  |                      |                     |                        |
| (S) Returned to House with Amendments                     | 03/16/2005  |                      |                     |                        |
| (S) 3rd Reading Concurred                                 | 03/16/2005  | 48                   | 2                   |                        |
| (S) Scheduled for 3rd Reading                             | 03/16/2005  |                      |                     |                        |
| (S) 2nd Reading Concurred on Voice Vote                   | 03/15/2005  | 49                   | 1                   |                        |
| (S) Scheduled for 2nd Reading                             | 03/15/2005  |                      |                     |                        |
| (C) Sent to Printing                                      | 03/14/2005  |                      |                     |                        |
| (S) Committee Report--Bill Concurred as Amended           | 03/14/2005  |                      |                     | (S) Judiciary          |
| (S) Committee Executive Action--Bill Concurred as Amended | 03/14/2005  | 9                    | 3                   | (S) Judiciary          |
| (S) Hearing                                               | 03/09/2005  |                      |                     | (S) Judiciary          |
| (S) Referred to Committee                                 | 02/22/2005  |                      |                     | (S) Judiciary          |
| (S) First Reading                                         | 02/22/2005  |                      |                     |                        |
| (H) Transmitted to Senate                                 | 02/15/2005  |                      |                     |                        |
| (H) 3rd Reading Passed                                    | 02/15/2005  | 94                   | 3                   |                        |
| (H) Scheduled for 3rd Reading                             | 02/15/2005  |                      |                     |                        |
| (H) 2nd Reading Passed                                    | 02/14/2005  | 97                   | 3                   |                        |
| (H) Scheduled for 2nd Reading                             | 02/14/2005  |                      |                     |                        |
| (C) Sent to Printing                                      | 02/02/2005  |                      |                     |                        |
| (H) Committee Report--Bill Passed as Amended              | 02/02/2005  |                      |                     | (H) Business and Labor |

|                                                        |            |    |                          |
|--------------------------------------------------------|------------|----|--------------------------|
| (H) Committee Executive Action--Bill Passed as Amended | 02/02/2005 | 18 | 0 (H) Business and Labor |
| (H) Hearing                                            | 02/01/2005 |    | (H) Business and Labor   |
| (C) Introduced Bill Text Available Electronically      | 01/18/2005 |    |                          |
| (H) Referred to Committee                              | 01/18/2005 |    | (H) Business and Labor   |
| (H) First Reading                                      | 01/18/2005 |    |                          |
| (H) Introduced                                         | 01/18/2005 |    |                          |
| (C) Draft Delivered to Requester                       | 01/17/2005 |    |                          |
| (C) Draft Ready for Delivery                           | 01/10/2005 |    |                          |
| (C) Draft in Assembly/Executive Director Review        | 01/08/2005 |    |                          |
| (C) Draft in Final Drafter Review                      | 01/07/2005 |    |                          |
| (C) Bill Draft Text Available Electronically           | 01/07/2005 |    |                          |
| (C) Draft in Input/Proofing                            | 01/07/2005 |    |                          |
| (C) Draft to Drafter - Edit Review [CMD]               | 01/07/2005 |    |                          |
| (C) Draft in Edit                                      | 01/07/2005 |    |                          |
| (C) Draft in Legal Review                              | 01/07/2005 |    |                          |
| (C) Draft to Requester for Review                      | 12/30/2004 |    |                          |
| (C) Draft Request Received                             | 12/01/2004 |    |                          |

## Sponsor, etc.

| Sponsor, etc.   | Last Name/Organization | First Name | Mi |
|-----------------|------------------------|------------|----|
| Requester       | Gallik                 | Dave       |    |
| Drafter         | Petes                  | Greg       |    |
| Primary Sponsor | Gallik                 | Dave       |    |

## Subjects

| Description         | Revenue/Approp. | Vote Majority Req. | Subject Code |
|---------------------|-----------------|--------------------|--------------|
| Consumer Protection |                 | Simple             | CONS         |

## Additional Bill Information

**Probable Fiscal Note:** No  
**Preintroduction Required:** N  
**Session Law Ch. Number:** 440  
**DEADLINE**

**Category: General Bills**

**Transmittal Date: 03/01/2005**

**Return (with 2nd house amendments) Date: 04/06/2005**

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## **Section Effective Dates**

**Section(s)    Effective Date    Date Qualified**

All Sections 28-APR-05

HOUSE BILL NO. 345  
INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE PERIOD OF TIME FOR WHICH A CAUSE OF ACTION FOR A FRAUDULENT TRANSFER MAY BE FILED; PROVIDING FOR TOLLING OF THE PERIOD OF LIMITATION IF THE TRANSFERRED PROPERTY IS SUBJECT TO ANOTHER CLAIM AGAINST THE TRANSFEROR; AMENDING SECTION 31-2-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 31-2-341, MCA, is amended to read:

**"31-2-341. Extinguishment Termination of cause of action.** (1) A cause of action with respect to a fraudulent transfer or obligation under this part is ~~extinguished~~ terminated unless an action is brought under:

(1)(a) 31-2-333(1)(a) within ~~2~~ 4 years after the transfer was made or the obligation was incurred or, if later, within ~~4~~ year 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2)(b) 31-2-333(1)(b) or 31-2-334(1) within ~~2~~ 4 years after the transfer was made or the obligation was incurred; or

(3)(c) 31-2-334(2) within ~~4~~ year 2 years after the transfer was made or the obligation was incurred.

(2) The periods of limitation contained in subsection (1) are tolled until a judgment is obtained if the transferred property is subject to another claim against the transferor."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to transfers that occurred before [the effective date of this act] for which the period prescribed in 31-2-341 had not yet run.

- END -

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JIM KEANE**, on February 1, 2005 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Jim Keane, Chairman (D)  
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)  
Rep. Joe McKenney, Vice Chairman (R)  
Rep. Elsie Arntzen (R)  
Rep. Bob Bergren (D)  
Rep. Tim Dowell (D)  
Rep. Kevin T. Furey (D)  
Rep. Dave Gallik (D)  
Rep. Ralph Heinert (R)  
Rep. Llew Jones (R)  
Rep. Mike Jopek (D)  
Rep. Harry Klock (R)  
Rep. Scott Mendenhall (R)  
Rep. Mike Milburn (R)  
Rep. Don Roberts (R)  
Rep. Wayne Stahl (R)  
Rep. Dan Villa (D)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Kyanne Kelly, Committee Secretary

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: HB 441, 1/24/2005; HB 418,  
1/24/2005; HB 281, 1/24/2005; HB  
345, 1/24/2005

Executive Action: HB 400, HB 402, HB 424, HB 348, HB  
419

**HEARING ON HB 441**

**Opening Statement by Sponsor:**

REP. BRADY WISEMAN (D), HD 65, opened the hearing on HB 441, Sale  
of pseudoephedrine only by prescription.

00:02:34

**Proponents' Testimony:**

00:08:48 Steven Spanogle, Montana Department of Justice and  
Montana Alliance for Endangered Children

00:16:29 Jim Kembel, Montana Association of Chiefs of  
Police

00:16:52 Mike Batista, Department of Justice

00:18:35 Pat Melby, Montana Medical Association

00:19:17 Pam Langley, Montana Agricultural Business  
Association

**EXHIBIT(buh25a01)**

00:20:16 REP. BOB BERGREN, HD 33, HAVRE

**Opponents' Testimony:**

00:22:12 Aidan Myhre, Pharmaceuticals Association

00:26:26 Brad Griffin, Montana Retail Association

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

00:28:33

**Closing by Sponsor:**

00:33:17

**HEARING ON HB 418**

**Opening Statement by Sponsor:**

REP. JIM KEANE (D), HD 75, opened the hearing on HB 418, Revise  
the definition of supervisory employee regarding collective  
bargaining.

00:37:13

HEARING ON HB 345

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on HB 345, Revise time period for fraudulent transfer statute of limitations.

01:43:18

EXHIBIT(buh25a03)

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:50:58

Closing by Sponsor:

01:54:37

EXECUTIVE ACTION ON HB 400

Motion: REP. KEANE moved that HB 400 DO PASS.

Discussion:

01:55:48

Vote: Motion carried 13-5 by roll call vote with REPS. KLOCK, MCKENNEY, MENDENHALL, MILBURN, and STAHL voting no.

EXECUTIVE ACTION ON HB 402

Motion: REP. GALVIN-HALCRO moved that HB 402 DO PASS.

Discussion:

02:12:27

Vote: Motion failed 7-11 by roll call vote with REPS. BERGREN, DOWELL, FUREY, GALVIN-HALCRO, KEANE, VILLA, and WINDY BOY voting aye.

Motion/Vote: REP. GALVIN-HALCRO moved that HB 402 BE TABLED AND THE VOTE REVERSED. Motion passed 11-7.

**31-2-333. Transfers fraudulent as to present and future creditors.** (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

**31-2-334. Transfers fraudulent as to present creditors.** (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3)

**HOUSE OF REPRESENTATIVES**  
**Roll Call**  
**BUSINESS AND LABOR COMMITTEE**

DATE 2-1-05

| <u>NAME</u>                             | <u>PRESENT</u> | <u>ABSENT</u> | <u>EXCUSED</u> |
|-----------------------------------------|----------------|---------------|----------------|
| REP. JIM KEANE, CHAIR.                  | ✓              |               |                |
| REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR | ✓              |               |                |
| REP. JOE McKENNEY, VICE CHAIR           | ✓              |               |                |
| REP. ELSIE ARNTZEN                      | ✓              |               |                |
| REP. BOB BERGREN                        | ✓              |               |                |
| REP. TIM DOWELL                         | ✓              |               |                |
| REP. KEVIN FUREY                        | ✓              |               |                |
| REP. DAVE GALLIK                        | ✓              |               |                |
| REP. RALPH HEINERT                      | ✓              |               |                |
| REP. LLEW JONES                         | ✓              |               |                |
| REP. MIKE JOPEK                         | ✓              |               |                |
| REP. HARRY KLOCK                        | ✓              |               |                |
| REP. SCOTT MENDENHALL                   | ✓              |               |                |
| REP. MIKE MILBURN                       | ✓              |               |                |
| REP. DON ROBERTS                        | ✓              |               |                |
| REP. WAYNE STAHL                        | ✓              |               |                |
| REP. DAN VILLA                          | ✓              |               |                |
| REP. JONATHAN WINDY BOY                 | ✓              |               |                |

# VISITORS REGISTER

Montana

House of Representatives

Business & Labor Committee

Bill Number: HB 345 Date: 2/1/05

Please print ~ Please print ~ Please print ~ Please print

| Name | Representing | Support | Oppose | Informational |
|------|--------------|---------|--------|---------------|
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Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JIM KEANE**, on February 2, 2005 at  
8:00 A.M., in Room 172 Capitol.

**ROLL CALL**

**Members Present:**

Rep. Jim Keane, Chairman (D)  
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)  
Rep. Joe McKenney, Vice Chairman (R)  
Rep. Elsie Arntzen (R)  
Rep. Bob Bergren (D)  
Rep. Tim Dowell (D)  
Rep. Kevin T. Furey (D)  
Rep. Dave Gallik (D)  
Rep. Ralph Heinert (R)  
Rep. Llew Jones (R)  
Rep. Mike Jopek (D)  
Rep. Harry Klock (R)  
Rep. Scott Mendenhall (R)  
Rep. Mike Milburn (R)  
Rep. Don Roberts (R)  
Rep. Wayne Stahl (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Dan Villa (D)

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Kyanne Kelly, Committee Secretary

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: HB 427, 2/24/2005; HB 422,  
2/24/2005; HB 331, 2/24/2005  
Executive Action: HB 427, HB 182, HB 345

**HEARING ON HB 427**

**Opening Statement by Sponsor:**

REP. WANDA GRINDE (D), HD 48, opened the hearing on HB 427,  
Revise contributions to law enforcement group insurance.  
00:03:37

**Proponents' Testimony:**

00:05:11 Jerry Williams, Montana Police Protective  
Association

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

00:06:24

**Closing by Sponsor:**

00:08:30

**HEARING ON HB 422**

**Opening Statement by Sponsor:**

REP. DAVE GALLIK (D), HD 79, opened the hearing on HB 422,  
Liveable wage for families.  
00:09:08

**Proponents' Testimony:**

00:13:27 Darrell Holzer, AFL-CIO  
00:16:54 Gene Fenderson, Montana Laborers Union  
00:19:18 Bob Ream, Montana Democratic Party  
00:21:09 Todd Lovshin, MEA-MFT

**Opponents' Testimony:**

00:22:34 Mike McGinley, Montana Economic Association  
00:24:23 Brad Griffin, Montana Retail Association  
00:27:06 Charles Brooks, Billings Chamber of Commerce  
00:33:16 Barbara Ranf, Montana Chamber of Commerce

**EXHIBIT(buh26a01)**

REP. FUREY re-entered the room.

EXECUTIVE ACTION ON HB 182

Motion: REP. BERGREN moved that HB 182 DO PASS.

Discussion:

02:42:03

Motion: REP. BERGREN moved that HB 182 BE AMENDED.

Discussion:

02:43:24

EXHIBIT (buh26a05)

Vote: Motion carried unanimously by voice vote. REPS. DOWELL, GALVIN-HALCRO, VILLA and WINDY BOY voted by proxy.

Motion: REP. ROBERTS moved that HB 182 DO PASS AS AMENDED.

Discussion:

02:45:57

Vote: Motion carried 17-1 by voice vote with REP. GALLIK voting no. REPS. DOWELL, GALVIN-HALCRO, VILLA and WINDY BOY voted by proxy.

EXECUTIVE ACTION ON HB 345

Motion: REP. GALLIK moved that HB 345 DO PASS.

Discussion:

02:48:40

Motion: REP. MENDENHALL moved that HB 345 BE AMENDED.

Discussion:

02:49:25

EXHIBIT (buh26a06)

Vote: Motion carried 17-1 by voice vote. REP GALLIK voted no. REPS. DOWELL, GALVIN-HALCRO, VILLA and WINDY BOY voted by proxy.

Motion: REP. GALLIK moved that HB 345 DO PASS AS AMENDED.

Discussion:

02:57:21

Vote: Motion carried unanimously by voice vote. REPS. DOWELL, GALVIN-HALCRO, VILLA and WINDY BOY voted by proxy.

EXHIBIT 6  
DATE 2-2-05  
HB 345

Amendments to House Bill No. 345  
1st Reading Copy

Requested by Representative Scott Mendenhall

For the House Business and Labor Committee

Prepared by Bartley Campbell  
February 2, 2005 (7:51am)

1. Title, line 8.

**Strike:** "AND" through "DATE"

2. Page 1, line 26 through line 28.

**Strike:** section 3 in its entirety

- END -

**HOUSE OF REPRESENTATIVES**  
**Roll Call**  
**BUSINESS AND LABOR COMMITTEE**

DATE 2-2-05

| <u>NAME</u>                             | <u>PRESENT</u> | <u>ABSENT</u> | <u>EXCUSED</u> |
|-----------------------------------------|----------------|---------------|----------------|
| REP. JIM KEANE, CHAIR.                  | ✓              |               |                |
| REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR | ✓              |               |                |
| REP. JOE McKENNEY, VICE CHAIR           | ✓              |               |                |
| REP. ELSIE ARNTZEN                      | ✓              |               |                |
| REP. BOB BERGREN                        | ✓              |               |                |
| REP. TIM DOWELL                         | ✓              |               |                |
| REP. KEVIN FUREY                        | ✓              |               | ✓              |
| REP. DAVE GALLIK                        | ✓              |               |                |
| REP. RALPH HEINERT                      | ✓              |               |                |
| REP. LLEW JONES                         | ✓              |               |                |
| REP. MIKE JOPEK                         | ✓              |               |                |
| REP. HARRY KLOCK                        | ✓              |               |                |
| REP. SCOTT MENDENHALL                   | ✓              |               |                |
| REP. MIKE MILBURN                       | ✓              |               |                |
| REP. DON ROBERTS                        | ✓              |               |                |
| REP. WAYNE STAHL                        | ✓              |               |                |
| REP. DAN VILLA                          |                |               | ✓              |
| REP. JONATHAN WINDY BOY                 | ✓              |               |                |



## HOUSE STANDING COMMITTEE REPORT

February 2, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 345** (first reading copy -- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Jim Keane*  
Representative Jim Keane, Chair

**And, that such amendments read:**

1. Title, line 8.

**Strike:** "AND" through "DATE"

2. Page 1, line 26 through line 28.

**Strike:** section 3 in its entirety

- END -

**Committee Vote:**

**Yes 18, No 0.**

261254SC.bkh

2/2/05  
jbn

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **SEN. BRENT R. CROMLEY**, on March 9, 2005 at  
8:00 A.M., in Room 137 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jon Ellingson (D)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Jim Shockley (R)

**Members Excused:** Sen. Mike Wheat, Chairman (D)

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 232, HB 354, HB 701, HB 598, HB  
345, HB 146, HB 245  
Executive Action: HB 232, HB 354, HB 701, HB 598, SB  
493, HB 216

**VICE CHAIR CROMLEY** opened the hearing. He indicated that the order of the bills would be HB 232, HB 354, HB 701, HB 598, HB 345, HB 146, and HB 245. He opened the hearing on HB 232.

**HEARING ON HB 232**

**Opening Statement by Sponsor:**

**REP. MARK NOENNIG (R), HD 46**, opened the hearing on **HB 232**, Require presentence report to propose payment of IT charge.

**REP. NOENNIG** explained that HB 232 dealt with the surcharge charged in courts. He informed the Committee that the bill would extend the termination date and would require that presentence investigation reports include a directive that the surcharge be charged. He noted that the surcharge was the primary source of funding for information technology (IT) for Montana district courts and courts of limited jurisdiction. The surcharge applies to defendants convicted of any offense that is criminal, and to the initiating party in a civil or probate case for each defendant and respondent who appears in the case. He reported that the surcharge had not raised as much money as it should have for various reasons, including the fact that some judges omitted the charge.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.5}*

**Proponents' Testimony:**

**Mary Phippen, Representing the Montana Association of Clerks of District Court**, stood in support of HB 232.

*{Tape: 1; Side: A; Approx. Time Counter: 2.5 - 2.7}*

**Jim Oppedhal, Administrator for the Montana Supreme Court**, rose in support of HB 232 because it was an effort to insure adequate, long term, stable funding for court automation and IT projects. He mentioned that there were 102 courts of limited jurisdiction who use Full Court which is a modern court IT package. They want to make sure that the surcharges are applied uniformly.

*{Tape: 1; Side: A; Approx. Time Counter: 2.7 - 4.6}*

**Ted Clack, Representing the Montana Magistrates Association**, provided a written version of his testimony. He expressed that the Association was in strong support of HB 232 and he urged the Committee give a do pass recommendation.

**EXHIBIT(jus52a01)**

*{Tape: 1; Side: B; Approx. Time Counter: 2.9 - 3.4}*

**Brenda Nordlund, Representing the Department of Justice**, spoke in support of HB 598. She indicated that the Department had been a partner in the process to implement the IT programs. She urged the Committee's support for HB 598.

*{Tape: 1; Side: B; Approx. Time Counter: 3.4 - 4.2}*

**Nancy Sweeney, Lewis and Clark County Clerk of Court**, rose in support of HB 598. She expressed that the clerks of court are very concerned with the quality of juries that would be developed after the procedure was implemented.

*{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 5.3}*

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

**REP. GALLIK** stressed that it was important to pass HB 598 in order to ensure that juries were not challenged by individuals who are convicted. He indicated that **SEN. ELLINGSON** was carrying the bill on the Senate Floor.

*{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 6.2}*

**VICE CHAIR CROMLEY** closed the hearing on HB 598 and opened the hearing on HB 345.

At this time, **SEN. MOSS** left the hearing.

**HEARING ON HB 345**

Opening Statement by Sponsor:

**REP. DAVE GALLIK (D)**, HD 79, opened the hearing on **HB 345**, Revise time period for fraudulent transfer statute of limitations.

**REP. GALLIK** handed out two statutes, 31-2-333 and 31-2-334, which would be amended by HB 345. He explained that HB 345 would extend the period of time for which a cause of action for a fraudulent transfer may be filed. He brought the bill at the request of several business people who have found that there is

not a sufficient amount of time to bring forth a cause of action for a fraudulent transfer. He explained what he hoped to do with the changes in the two statutes. He gave the definition of a fraudulent transfer. He expressed that they had found that the time limit of two years, set forth in the fraudulence transfer statute, was not sufficient. He indicated that the bill had passed through the House without any problems. There was only one section which was stricken, the Retroactive Applicability, to ensure that the bill would be prospective only.

EXHIBIT(jus52a03)

*{Tape: 1; Side: B; Approx. Time Counter: 6.2 - 11.1}*

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

VICE CHAIR CROMLEY asked REP. GALLIK why they had changed the words "extinguished" to "terminated" on Lines 13 and 14 of HB 345.

REP. GALLIK expressed that he had not requested that change but it came about by the Legislative Services drafters.

VICE CHAIR CROMLEY requested that REP. GALLIK speak briefly to Lines 21 and 22.

REP. GALLIK thought that the language in those two lines was trying to say that if there are two competing claims against the transfer or that one of those claims is not going to be deemed extinguished, or terminated, by way of the statute of limitations and the competing claims were going through the judicial system at the same time, then the time period for filing a claim would be extended for the claim which was filed second.

*{Tape: 1; Side: B; Approx. Time Counter: 11.1 - 13.7}*

VICE CHAIR CROMLEY asked REP. GALLIK to run through a scenario in which this bill might be applied.

*{Tape: 1; Side: B; Approx. Time Counter: 13.7 - 15.1}*

**SEN. GARY PERRY, SD 35, MANHATTAN**, cited Lines 21-22. He wondered if the language meant that the timeframes set forth in Lines 15-20 did not apply until the judgment was obtained.

**REP. GALLIK** affirmed **SEN. PERRY'S** statement. He reiterated that the statute of limitations would not start running until there was a judgement attained against an individual on a competing claim.

**SEN. PERRY** took this to mean that regardless of how long the lawsuit might go on there would be no limit.

**SEN. GALLIK** explained that there would be a limit it would be the exact same and it would not start until a judgment was obtained.

**SEN. PERRY** followed up by asking when the tolling began.

**REP. GALLIK** replied that the statute of limitations did not start to run until one of the two claims had a judgment against it. He clarified that the statute would start to run at the time the judgment was obtained by one of the competing claims on a fraudulent transfer.

*{Tape: 1; Side: B; Approx. Time Counter: 15.1 - 18.8}*

**SEN. PERRY** clarified that he had been asking about when the tolling began. He wanted to know if it was when the judgment was obtained or when the lawsuit was filed.

**REP. GALLIK** responded that the cause of action would arise at the time the fraudulent transfer was made or when there was actual knowledge of a transfer that was made which was fraudulent.

**VICE CHAIR CROMLEY** questioned **REP. GALLIK** in regard to a situation for a personal injury where an individual transferred property because they knew that they were going to be charged and the plaintiff found out that there was no money to be had because of the transfer. He wanted to know if the tolling period would apply to this scenario.

**REP. GALLIK** remarked that it would not in that claim because they were not talking about the transferred property being the subject of the claim against the transferor. He stressed that it only applied to the claim for fraudulent transfer.

**VICE CHAIR CROMLEY** continued asking about the scenario he put forth.

**REP. GALLIK** clarified that the statute of limitations begins from the time an individual learns that the other person transferred their assets or from the time the individual should have known. He wanted to pass this bill because it would recognize the length of time litigation takes and allow an individual to discover if they had a legitimate claim before they lose the ability to bring a fraudulent transfer claim.

*{Tape: 1; Side: B; Approx. Time Counter: 18.8 - 23}*

**VICE CHAIR CROMLEY** was unclear as to when the tolling takes place. He cited Lines 21 and 22.

**REP. GALLIK** remarked that the limitation periods are tolled until a judgment is obtained. If the property that was transferred was also the subject of another claim, where somebody else has the exact same situation, it is tolled until there is a judgment obtained by one or the other.

*{Tape: 1; Side: B; Approx. Time Counter: 23 - 24.7}*

At this time **SEN. MOSS** returned.

**SEN. MCGEE** requested that **REP. GALLIK** provide a layman's definition of toll.

**REP. GALLIK** explained that toll meant the statute of limitations would not start to run, it is put on standby until a further date.

**SEN. PERRY** referenced Lines 13-20. He presented the scenario of someone suing him, and he did not want to put assets at risk. If he transferred those assets, he wanted to know if it was a fraudulent transfer because he had knowledge that someone wanted to sue him or would it only be a fraudulent transfer after a lawsuit had been filed.

**REP. GALLIK** directed the Committee to look at 31-2-333 which explains a fraudulent transfer. He expressed that it was only fraudulent if an individual was going to transfer assets with the intent to hinder, delay, or defraud any creditor of the debtor without having reasonable equivalent value in exchange for the transfer.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.9}*

**SEN. PERRY** followed up indicating that until there was a judgment there would be no debtor.

**REP. GALLIK** responded that there could still be a fraudulent claim. If an individual knew that a person was going to sue them, and would most likely be successful, and they try to defraud the claimant, that would be a fraudulent claim and at that point in time the statute of limitation would start to run.

**SEN. PERRY** wanted to know how a person was to know who was going to win a lawsuit.

**REP. GALLIK** provided examples of cases which are fairly clear in the outcome.

*{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 5.6}*

**Closing by Sponsor:**

**REP. GALLIK** offered to provide a specific memorandum explaining the answers to all of the questions put forth by the Committee before they took Executive Action. He did not have a Senator to carry the bill on the Senate Floor.

*{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 7.3}*

**VICE CHAIR CROMLEY** closed the hearing on HB 345 and opened the hearing on HB 146.

At this time, **SEN. PEASE** and **SEN. ELLINGSON** left the hearing.

**HEARING ON HB 146**

**Opening Statement by Sponsor:**

**REP. DAVE GALLIK (D), HD 79**, opened the hearing on **HB 146**, Civil false claims act.

**REP. GALLIK** explained the history of a civil false claims act. He expressed that in HB 146 he was trying to repeat what the federal government had done in their False Claims Act Law. He thought that this bill was a good idea because the people of Montana had entrusted the legislature to take care of the budget. He explained that a false claim was one that was a request or demand for money, property, or services that is made by a third party to a governmental entity that is false and they know it is false. He walked through the bill and addressed a few areas where he would like to see amendments. He described mitigating factors that the government attorney could use. The section of the bill he was most concerned with was on Page 4, New Section 6. This language would allow a private citizen who found out, not

# MONTANA SENATE 2005 LEGISLATURE

## ROLL CALL

### JUDICIARY

DATE 3-9-05

| NAMES                             | PRESENT | ABSENT | EXCUSED |
|-----------------------------------|---------|--------|---------|
| SEN. MICHAEL WHEAT, CHAIRMAN      |         |        | X       |
| SEN. BRENT CROMLEY                | X       |        |         |
| SEN. AUBYN CURTISS                | X       |        |         |
| SEN. JON ELLINGSON                | X       |        |         |
| SEN. JESSE LASLOVICH              | X       |        |         |
| SEN. JEFF MANGAN                  | X       |        |         |
| SEN. DAN McGEE                    | X       |        |         |
| SEN. LYNDA MOSS                   | X       |        |         |
| SEN. JERRY O'NEIL                 | X       |        |         |
| SEN. GERALD PEASE                 | X       |        |         |
| SEN. GARY PERRY                   | X       |        |         |
| SEN. JIM SHOCKLEY                 | X       |        |         |
|                                   |         |        |         |
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|                                   |         |        |         |
| VALENCIA LANE, LSD                | X       |        |         |
| MARI PREWETT, COMMITTEE SECRETARY |         |        |         |
|                                   |         |        |         |

DATE

March 9, 2005

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

HB 701, HB 598, HB 354,  
HB 345, HB 245, HB 232, HB 146

## PLEASE PRINT

| NAME                        | PHONE          | REPRESENTING                              | BILL #           | SUPPORT | OPPOSE |
|-----------------------------|----------------|-------------------------------------------|------------------|---------|--------|
| HB 598 Mary "Marty" Phippen | (201) 262-8459 | MT. Assn. Clerks of District Court        | HB 232<br>HB 598 | X       |        |
| HARRIS HIMES                |                | MFC                                       | 245              | ✓       |        |
| Elaine Shavelly             | 4-5376         | DOT                                       | 598              | ✓       |        |
| Greg Nove                   | 444-1776       | DOT - MUD                                 | 598              | ✓       |        |
| Jed C. Fitch                | 443-3124       | MT Trial Lawyers                          | HB 146           | X       |        |
| Ted Clack                   | 442-9071       | MT Magistrates                            | HB 232           | X       |        |
| Jim Appedahl                | 444-2621       | Court Administrator                       | HB 232           | X       |        |
| Nancy Sweeney               | 447-8215       | Lewis & Clark Co. Clerk of District Court | HB 598<br>HB 232 | X       |        |
| THOMAS C. MAGNUS            | 443-1040       | VICE CHAIR<br>MT BAR BETTER COURT         | HB 232<br>HB 711 | X       |        |
| Brian Nord                  | 444-2713       | MT Dept of Justice                        | HB 598           | X       |        |
| Ali Burzydon                | 444-5876       | Att. Gen's office                         | HB 146           | X       |        |
| Jacque Trude                | 458-8609       | Eagle Forum                               | HB 245           | X       |        |
| CHRIS CHRISTIANS            | 868-6406       | MLA                                       | HB 345           | X       |        |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATEMENTS DUE 11:00 AM

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN MIKE WHEAT**, on March 14, 2005 at 8:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mike Wheat, Chairman (D)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jon Ellingson (D)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Jim Shockley (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 201, HB 49, HB 191, HB 696  
Executive Action: HB 97; HB 98; HB 285; HB 345; HB  
349; HB 363; HB 367

Vote: Motion failed 1-11 by voice vote with SEN. MANGAN voting aye and SEN. WHEAT voting no by proxy.

Motion/Vote: SEN. LASLOVICH moved that HB 98 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

*{Tape: 3; Side: A; Approx. Time Counter: 21.3 - 24.9}*

At this time, SEN. CROMLEY left the meeting.

EXECUTIVE ACTION ON HB 285

Motion/Vote: SEN. MANGAN moved that HB 285 BE CONCURRED IN. Motion passed unanimously with SEN. WHEAT and SEN. CROMLEY voting aye by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 0.7}*

SEN. COCCHIARELLA was identified as the senator who would be carrying the bill on the floor.

At this time, SEN. CROMLEY returned to the meeting.

EXECUTIVE ACTION ON HB 345

Motion: SEN. SHOCKLEY moved that HB 345 BE CONCURRED IN.

Discussion: SEN. O'NEIL attempted to explain the bill to SEN. SHOCKLEY per his request. He indicated that the bill would allow an individual more time to do an action for fraudulent transfer.

SEN. SHOCKLEY expressed that he still did not think that he would be able to explain the bill on the floor.

VICE CHAIR MCGEE noted that there had been a memo handed out on HB 345.

EXHIBIT(jus56b06)

SEN. O'NEIL referenced Line 21. He wanted to know who the other claim in this sentence would belong to.

SEN. SHOCKLEY guessed that it would be a third party claimant.

**VICE CHAIR MCGEE** commented that he would not vote for the bill because it was not understandable, even to lawyers and those who had written it.

**Motion:** SEN. O'NEIL moved that HB 345 BE AMENDED BY STRIKING SUBSECTION 2, LINES 21-22 AND APPROPRIATE LANGUAGE IN THE TITLE.

EXHIBIT(jus56b07)

**Discussion:** VICE CHAIR MCGEE asked if it would void the title of the bill.

**Ms. Lane** replied that in the title of the bill they would have to strike on Lines 5-7, starting after "may be filed;" and up to "amending section".

**Vote:** Motion carried 11-1 by voice vote with SEN. LASLOVICH voting no and SEN. WHEAT voting aye by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 0.7 - 6.7}*

**Motion/Vote:** SEN. MANGAN moved that HB 345 BE CONCURRED IN AS AMENDED. Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. PERRY voting no with SEN. WHEAT voting aye by proxy.

**Motion/Vote:** SEN. MANGAN moved to RECONSIDER THE MOTION on HB 345. Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 6.7 - 8.5}*

**Motion:** SEN. SHOCKLEY moved that HB 345 BE CONCURRED IN AS AMENDED.

**Discussion:** SEN. PERRY restated a question that he had asked REP. GALLIK based on his testimony, that, if a person transfers assets because they know they are going to lose a case his question was, "How does a person know that they were going to lose a case? How do we have confidence in this system of justice if we know beforehand we are going to lose the case?"

SEN. CROMLEY responded that they do not know that they are going to lose the case, they are just worried that they are going to.

VICE CHAIR MCGEE added that some people know they are guilty and will try to protect their position.

**SEN. PERRY** attested that this was the reason that 94% of the cases are settled. He added that there was a case in federal state tax law of anticipation of death. He wanted to clarify if they were talking about assets that were transferred after a lawsuit was filed or in anticipation of a potential lawsuit.

*{Tape: 3; Side: B; Approx. Time Counter: 8.5 - 10.9}*

**SEN. JON ELLINGSON, SD 49, MISSOULA**, believed that the law on fraudulent transfer addressed both of those considerations.

**SEN. PERRY** said that if the bill said, any transfer of assets that someone considers in anticipation of a lawsuit that has not been filed, then it opens it up so broadly that any transfer could be construed that way if any claim is brought after the transfer regardless of the reason for the transfer.

**SEN. ELLINGSON** did not think that it opened up all transfers. He believed that it had to be a transfer made without consideration. He noted that it would not be a fraudulent transfer if the individual had a transfer of fair market value.

**SEN. SHOCKLEY** asserted that fraud was hard to prove and it still had to be taken to court in order to determine if the transfer was fraudulent.

*{Tape: 3; Side: B; Approx. Time Counter: 10.9 - 13.7}*

**VICE CHAIR MCGEE** asked what the difference would be between a transfer with no fair market value return and a gift.

**SEN. ELLINGSON** indicated that it would go to the issue of fraudulent intent. If an individual had a consistent history of giving their children \$20,000 a year, they would have a good argument that it was not a fraudulent conveyance. However, if an individual has never given anything to family before, it would be evidence that it was fraudulent.

**SEN. SHOCKLEY** informed the Committee that when there is a fraudulent consideration there are around seven elements and is very hard to prove.

**SEN. PERRY** commented that under the scenario described by **SEN. ELLINGSON**, there could also be a transfer to one's spouse or family members for the purposes of estate planning. He reiterated that it was too broad.

Vote: Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. PERRY voting no with SEN. WHEAT voting aye by proxy.

*{Tape: 3; Side: B; Approx. Time Counter: 13.7 - 16.7}*

SEN. LASLOVICH offered to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 349

Motion: SEN. MANGAN moved that HB 349 BE CONCURRED IN.

Discussion: SEN. CROMLEY distributed an amendment to the Committee.

EXHIBIT(jus56b08)

Motion: SEN. CROMLEY moved that HB 349 BE AMENDED.

Discussion: SEN. CROMLEY explained that the amendment dealt with the language on Page 2, Subsection 2. He thought that they should remain in the statute and thus the amendment would add them in a new subsection.

SEN. O'NEIL asserted that SEN. CROMLEY'S bill stated that a peace officer should do certain things, yet throughout the remainder of the bill it said that the peace officer would not be held liable if they didn't do these things.

SEN. CROMLEY remarked that the statute would allow an individual to be taken into protective custody by the arresting officer. He indicated that his amendment had the original duties with regard to the care of the person being detained.

*{Tape: 3; Side: B; Approx. Time Counter: 16.7 - 21}*

Vote: Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

Ms. Lane related that SEN. PERRY had asked her to do an amendment on Page 1, Line 30.

Motion: SEN. PERRY moved that HB 349 BE AMENDED.

Discussion: SEN. SHOCKLEY supported the second amendment.

March 10, 2005

MEMO

TO: Senate Judiciary Committee  
FROM: Dave Gallik  
RE; *415* HB , Extension of Statute of Limitations for Fraudulent Transfer Claims



At the hearing on this bill I promised you this memo. It provides more detailed information and legal authority on the specific provisions of the bill which generated the bulk of your questions.

In two cases, the Montana Supreme Court held that the Uniform Fraudulent Transfer Act ("UFTA"), § 31-2-341, MCA, had a two year statute of limitations that is not tolled regardless of almost all, if not all, circumstances. *Gulf Insurance Company and Security Insurance of Hartford v. Donald E. Clark et al.*, 2001 MT 45, and *In re the Estate of Arthur Johnson*. The statute of limitations in many other actions is longer than two years, for example, three years for a personal injury claim, five years for an oral contract claim, and eight for a written contract claim.

Therefore, under the current law, if a potential judgment debtor transfers assets, a complaint alleging fraudulent transfer must likely be filed in Court prior to obtaining a judgment in the claim against the potential debtor. Even more nonsensical, the claim must likely be filed prior to the time when the injury or contract claim must be filed. This not only will result in unnecessary lawsuits, fraud is a very serious allegation that under the current law must be made in court even if is later determined unwarranted. Consequently, a fraudulent transfer action should not be filed until a judgment has been obtained in the primary action.

March 10, 2005

MEMO

TO: Senate Judiciary Committee

FROM: Dave Gallik

RE: 345 HB , Extension of Statute of Limitations for Fraudulent Transfer Claims

Page 2.

In both of the above-cited cases, potential debtors transferred property in order to avoid a likely future judgment. Later, the debtors successfully raised the two year statute of limitations in § 31-2-341, MCA, claiming their property was protected against judgment creditors even if the property was transferred to avoid a legitimate debt. The Montana Supreme Court agreed with the debtors based upon amendments to the statute by the 1991 legislature. This was not the law prior to the 1991 amendments. (*See Murphy v. Atkinson* (1993), 262 Mont. 164, 169, 864 P.2d 273, 276, which held that the limitations period does not begin to run until the judgment is obtained).

The 1991 legislative history shows the UFTA was intended to protect creditors' rights. The legislature clearly intended to establish a limitations period consistent with then-existing law and with the limitation provisions governing fraud in general. Senate Bill 7, which adopted the UFTA in Montana, was sponsored by Senator Joe Mazurek in 1991. In his presentation and opening statement to the Senate Judiciary Committee, Senator Mazurek explained that "... the bill protects creditors against debtors who seek to conceal debt." LEGISLATIVE HISTORY OF SENATE BILL 7 (1991), SENATE JUDICIARY COMMITTEE HEARING NOTES, Jan. 22, 1991, p. 2. The Senator further noted that "section 10 changes the two-year statute of limitation on fraudulent transfers to four years. He added that the Committee may want to look at this because the proposed four-year statute of limitations could be a problem." *Id.*, p. 3. In response, Senator Towe commented that "... he was concerned that the four year statute would be different from

March 10, 2005

MEMO

TO: Senate Judiciary Committee

FROM: Dave Gallik

RE: 345 HB , Extension of Statute of Limitations for Fraudulent Transfer Claims

Page 3.

*the state fraud limit of two years."* *Id.* (emphasis added). Based on these concerns, the legislature changed the uniform act's four-year limitation provision to two years in Montana.

By adopting the shorter, two-year limitations period, the legislature clearly intended to make the UFTA comply with then-existing Montana law. Moreover, in adopting the UFTA, the Legislature's overriding purpose was to *protect* creditors, not diminish their remedies. This is evidenced by Senator Mazurek's comments at a subsequent hearing:

...the theme of the act is that citizens of society are only as good as their word as to the extent in which they honor their obligations. Obligations which are incurred should not be avoided by manipulation. ... *[T]he bill recognizes how important creditors are to society and attempts to assure availability by providing protection to creditors against debtors who seek to avoid their debts by the transfer of property.*

*Id.*, SENATE JUDICIARY COMMITTEE HEARING NOTES, March 12, 1991, pp. 6- 7 (emphasis added).

I hope this assists your deliberations during executive action. Should you need further information or explanations please let me know and it will be promptly provided to you. I appreciate your interest in this issue and willingness to take the time to fully understand the existing problem that this legislation addresses.

Amendments to House Bill No. 345  
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane  
March 14, 2005 (12:08pm)

1. Title, line 5 through line 7.

Following: "FILED;" on line 5

Strike: remainder of line 5 through "TRANSFEROR;" on line 7

2. Page 1, line 13.

Following: "action."

Strike: "(1)"

3. Page 1, line 15.

Strike: "(a)"

Insert: "(1)"

4. Page 1, line 18.

Strike: "(b)"

Insert: "(2)"

5. Page 1, line 20.

Strike: "(c)"

Insert: "(3)"

6. Page 1, line 21 through line 22.

Strike: subsection (2) in its entirety

- END -

MONTANA SENATE  
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-14-05

| NAMES                             | PRESENT | ABSENT | EXCUSED |
|-----------------------------------|---------|--------|---------|
| SEN. MICHAEL WHEAT, CHAIRMAN      | X       |        |         |
| SEN. BRENT CROMLEY                | X       |        |         |
| SEN. AUBYN CURTISS                | X       |        |         |
| SEN. JON ELLINGSON                | X       |        |         |
| SEN. JESSE LASLOVICH              | X       |        |         |
| SEN. JEFF MANGAN                  | X       |        |         |
| SEN. DAN MCGEE                    | X       |        |         |
| SEN. LYNDA MOSS                   | X       |        |         |
| SEN. JERRY O'NEIL                 | X       |        |         |
| SEN. GERALD PEASE                 | X       |        |         |
| SEN. GARY PERRY                   | X       |        |         |
| SEN. JIM SHOCKLEY                 | X       |        |         |
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|                                   |         |        |         |
| VALENCIA LANE, LSD                |         |        |         |
| MARI PREWETT, COMMITTEE SECRETARY |         |        |         |
|                                   |         |        |         |



## SENATE STANDING COMMITTEE REPORT

March 14, 2005

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 345** (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

*Senator Mike Wheat, Chair*

To be carried by Senator Jesse Laslovich

And, that such amendments read:

1. Title, line 5 through line 7.

Following: "FILED;" on line 5

Strike: remainder of line 5 through "TRANSFEROR;" on line 7

2. Page 1, line 13.

Following: "action."

Strike: "(1)"

3. Page 1, line 15.

Strike: "(a)"

Insert: "(1)"

4. Page 1, line 18.

Strike: "(b)"

Insert: "(2)"

5. Page 1, line 20.

Strike: "(c)"

Insert: "(3)"

6. Page 1, line 21 through line 22.

Strike: subsection (2) in its entirety

- END -

Committee Vote:

Yes 9, No 3.

561245SC.ssc

A handwritten signature, possibly "KX", in the bottom right corner.